was made, are always admissible in an action of ejectment against a stranger to the suit, and cannot be attacked because of irregularities or error in the cause in which they are made.

6. TRUSTS AND TRUSTEES—*Debts secured—Presumption of payment—Statute of limitations.* The presumption of payment of a debt secured by deed of trust arising from the lapse of twenty years is not affected by the passage of the act providing a statute of limitations for trust deeds. Acts 1897-8, p. 516.

NEWPORT NEWS v. BRADFORD.—Decided at Richmond, January 17, 1901.—*Buchanan*, J:

1. NEGLIGENCE—*Ordinary care—What constitutes.* Ordinary care does not require one absolutely to refrain from exposing himself to danger. It does require, however, such watchfulness and precaution to avoid coming into contact with danger as a person of ordinary prudence would use under like circumstances for his own protection in view of the danger to be avoided.

2. STREETS—*Obstruction—Avoidance—Evidence.* Where a person in the lawful use of a highway encounters an obstruction he may attempt to pass it, if it is consistent with reasonable care to do so, and this is generally a question for the jury, depending upon all of the circumstances of the particular case. It is pertinent, however, in connection with other facts, to inquire whether the danger could have been altogether avoided without serious inconvenience, and it is error to refuse to permit such inquiry to be made.

3. STREET RAILWAYS—*Removal of snow—Obstructing streets—Ordinary care.* A street car company, in operating its cars upon a street, has a right to remove snow from its track to another part of the street, but, in doing so, it has no right to bank up the snow so as to make it dangerous to use or cross the street, unless the work of cleaning the track necessarily obstructs passage, and then the company is bound to do all that ordinary care requires in removing the obstruction.

4. STREET RAILWAYS—*Extraordinary snow storms—Obstructing streets—Ordinary care.* Extraordinary care is not required of a street car company to avoid obstructing a street merely because of an extraordinary snow storm. All that is required of such company is ordinary care, but what is ordinary care depends on the facts of the particular case.

5. INSTRUCTIONS—*Objection after verdict.* As a general rule objections to instructions come too late after verdict.

6. CONTRIBUTORY NEGLIGENCE—*All facts and circumstances to be considered.* In determining the fact of contributory negligence on the part of a plaintiff, what others did, and what he thought could be done in the exercise of due care, are facts to be considered. The solution of that question, however, ought not to be made to depend on those two facts alone, but on all the facts and circumstances of the case tending to prove or disprove such contributory negligence.

SMITH AND OTHERS v. THOMAS AND OTHERS.—Decided at Richmond, January 17, 1901.—*Cardwell*, J:

1. CHANCERY JURISDICTION—*Cloud on title—Complainant in possession—Injunction.* An injunction should not be granted to restrain the recordation of a paper

which will throw a cloud on the title of complainant's land, where it appears upon the face of the bill or of an exhibit filed therewith that the complainant is not in possession. A bill to remove the cloud upon the title to land must aver title and possession in the complainant; and, even when such averments are made, the bill will be dismissed, at the hearing, for want of jurisdiction, if the evidence fails to show such possession.

McCoy v. Norfolk & Carolina Railroad Company.—Decided at Richmond, January 17, 1901.—*Buchanan*, J:

1. Pleading—*Declaration — Similar counts—Demurrer — Harmless error.* A plaintiff is not injured by sustaining a demurrer to two counts of a declaration where all the evidence that could have been given in under those counts can be given in under remaining counts of the declaration.

2. Master and Servant—*Personal injury of servant—Proximate cause—Concurring negligence of master and fellow-servant.* Where a servant is injured through the failure of the master to perform any of the duties which the law imposes on him personally, such as providing, inspecting and keeping in repair and good order reasonably safe and suitable machinery, instrumentalities and appliances for the use of a servant in his employment, and such failure proximately contributes to the injury, it is no defence for the master that the negligence of a fellow-servant also contributed to the injury. But the negligence of the master must proximately contribute to the injury. If the injury follows as a direct and immediate consequence of some intervening cause, the law will refer the injury to the last or proximate cause, and will not trace it to that which was remote.

3. Instructions—*Misleading.* It is not error to refuse instructions which, if not erroneous, are misleading.

Miller v. Miller.—Decided at Richmond, January 17, 1901.—*Cardwell*, J:

1. Arbitration—*Boundaries—Parol submission—Parol award.* Parties may agree by parol to settle by arbitration the dividing line between their lots of land, and an award made in pursuance of a submission for that purpose will bind the parties, although the arbitrators make a parol award, where the submission does not require the award to be in writing.

2. Resulting Trust—*Payment of Purchase money—Parol evidence.* Where one buys land with the money of another, a trust results by operation of law in favor of the party furnishing the money. The trust may be established by parol, but the proof must be clear.

3. Resulting Trust—*Payment of part of purchase money—Aliquot part.* In order to establish a resulting trust, arising from the payment of purchase money by another, it is not necessary that the beneficiary should have furnished the whole of the purchase money, nor an exact aliquot part thereof. If the amount paid is certain, a trust will result with respect to an undivided share of the land proportioned to his share of the whole price.